

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DANIEL W. RANNELS,

Plaintiff,

v.

SMITH, et al.,

Defendants.

Case No. 1:21-cv-00049-ADA-SKO (PC)

**ORDER DISCHARGING ORDER TO  
SHOW CAUSE WHY ACTION SHOULD  
NOT BE DISMISSED FOR FAILURE TO  
OBEY COURT ORDERS**

**ORDER DIRECTING PLAINTIFF TO  
FILE SECOND AMENDED COMPLAINT  
WITHIN 21 DAYS**

**ORDER DIRECTING CLERK OF THE  
COURT TO RE-SERVE SECOND  
SCREENING ORDER**

**ORDER DENYING REQUEST FOR THE  
APPOINTMENT OF COUNSEL**

Plaintiff Daniel W. Rannels is proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

**I. RELEVANT PROCEDURAL BACKGROUND**

On February 2, 2023, the Court issued its Second Screening Order. (Doc. 19.) The Court determined Plaintiff's first amended complaint failed to state a claim upon which relief could be granted. (*Id.* at 4-7.) The Court directed Plaintiff to file a second amended complaint curing the deficiencies identified in the order, or to file a notice of voluntary dismissal within 21 days of service of the order. (*Id.* at 7-8.)

1 A February 16, 2023, docket entry reflects Plaintiff did not receive the second screening  
 2 order because it was returned by the United States Postal Service marked “Undeliverable.” (*See*  
 3 Docket Entry dated 2/16/23.)

4 On April 3, 2023, the Court issued its Order To Show Cause (OSC) Why Action Should  
 5 Not Be Dismissed For Failure To Obey Court Orders. (Doc. 3.) Plaintiff was provided 21 days  
 6 within which to file a response to the OSC, or, alternatively, to file a second amended complaint  
 7 or notice of voluntary dismissal. (*Id.*)

8 On April 27, 2023, Plaintiff filed a response to the OSC. (Doc. 23.) Plaintiff states he  
 9 “never received [the] Second Screening Order,” noting the last correspondence he received from  
 10 the Court was “a change of the District Judge appointed.” (*Id.* at 1.) Plaintiff asserts he “did give  
 11 change of address and received mail” from the Court. (*Id.* at 2.) He repeats he did not receive the  
 12 Second Screening Order and asks that the Court appoint counsel to represent him “for further  
 13 procedure.” (*Id.*) Plaintiff also alleges his injuries “have worsened since no pain management  
 14 treatment have been received.” (*Id.*)

## 15 II. DISCUSSION

### 16 A. Plaintiff’s Obligation To Keep Court Apprised Of Current Address

17 Local Rule 182(f) provides that a “pro se party is under a continuing duty to notify the  
 18 Clerk and all other parties of any change of address .... Absent such notice, service of documents  
 19 at the prior address of the ... pro se party shall be fully effective.” And, as Plaintiff as advised in  
 20 this Court’s First Informational Order In Prisoner/Civil Detainee Civil Rights Case issued January  
 21 13, 2021: “A pro se plaintiff must keep the Court and opposing parties informed of the party’s  
 22 correct current address. Local Rule 182(f). If a party moves to a different address without filing  
 23 and serving notice of a change of address, *documents served at a party’s old address shall be*  
 24 *deemed received even if not actually received.* (*Id.*)” (Doc. 3 at 5, emphasis added.)

25 Plaintiff contends in his response to the OSC that he “did give a change of address.” The  
 26 Court’s records do not support his claim. When Plaintiff filed his original complaint on January  
 27 13, 2021, he was housed at the Sierra Conservation Center (SCC) in Jamestown. (Doc. 1.) On  
 28 April. 21, 2021, an Order Adopting Findings and Recommendations, served to Plaintiff at SCC

1 on March 24, 2021, was returned by the United States Postal Service marked “Undeliverable, Not  
2 Deliverable as Addressed.” (Docket Entry dated 4/12/21.) A May 6, 2021, Order re consent was  
3 returned and marked “Undeliverable, OTC” on May 24, 2021. (Docket Entry dated 5/24/21.)  
4 Plaintiff’s address of record remained unchanged because he did not file a notice of change of  
5 address. On November 15, 2021, the Court issued its First Screening Order. (Doc. 14.) Plaintiff  
6 responded by filing a First Amended Complaint on December 9, 2021; the amended complaint  
7 reflects Plaintiff remained housed at SCC. (Doc. 15.)

8 The Court issued three orders concerning reassignment of this case to District Judges  
9 which were served on Plaintiff at SCC between January and August 2022. (Docs. 16-18.) These  
10 orders were received by Plaintiff as noted in his response to the OSC.

11 On February 2, 2023, the Court issued its Second Screening Order, again serving Plaintiff  
12 at the address on file with the Court. (Doc. 19.) On February 16, 2023, that order was returned by  
13 the United States Postal Service marked “Undeliverable.” (Docket Entry dated 2/16/23.)

14 Despite asserting he “filed a change of address” with the Court, Plaintiff has not done so  
15 as required by the Local Rules. Until Plaintiff’s response to the OSC was received by the Court,  
16 the address for Plaintiff remained the SCC. Plaintiff fails to explain why he did not file a notice of  
17 change of address between February 16, 2023—when he was no longer housed at SCC—and  
18 April 27, 2023, when he responded to the OSC. He notes only at the bottom of the response to  
19 the OSC that he is now housed at Valley State Prison in Chowchilla.

20 Plaintiff is advised again that if he fails to file a Notice of Change of Address<sup>1</sup> following a  
21 move, the address then on file with the Court is considered current and any documents served to  
22 that address will be deemed received by Plaintiff whether he actually received them or not. Any  
23 time Plaintiff is moved, it is his obligation to file a Notice of Change of Address with the Court.  
24 Otherwise, as Plaintiff has been warned previously, he risks dismissal of this action for a failure  
25 to obey Court orders.

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27  
28 <sup>1</sup> A blank Notice of Change of Address form was provided to Plaintiff on January 13, 2021. (See Doc. 3 at 7 [First Informational Order].)

**B. Plaintiff's Shall File A Second Amended Complaint Within 21 Days**

In his response to the OSC, Plaintiff asserts he never received this Court's Second Screening Order (*see* Doc. 23), and the docket reflects the Second Screening Order was returned to the Court marked "Undeliverable" on February 16, 2023 (*see* Docket Entry dated 2/16/23.) While the Local Rules provide the Second Screening Order was "deemed received [by Plaintiff] even if not actually received," Plaintiff will be provided with an opportunity to respond to the Second Screening Order. The Court will direct the Clerk of the Court to serve a copy of that Order to Plaintiff at VSP. Plaintiff shall respond by filing a second amended complaint within 21 days or, alternatively, he may file a notice of voluntary dismissal.

**C. Plaintiff's Request for the Appointment of Counsel**

In his response to the OSC, Plaintiff asks the Court to appoint counsel. (Doc. 23 at 2.) Plaintiffs do not have a constitutional right to appointed counsel in § 1983 actions. *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *rev'd in part on other grounds*, 154 F.3d 952, 954 n.1 (9th Cir. 1998). Nor can the Court require an attorney to represent a party under 28 U.S.C. § 1915(e)(1). *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 304-05 (1989). However, in "exceptional circumstances," the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

Given that the Court has no reasonable method of securing and compensating counsel, the Court will seek volunteer counsel only in extraordinary cases. In determining whether "exceptional circumstances exist, a district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved." *Rand*, 113 F.3d at 1525 (internal quotation marks & citations omitted).

Here, the Court does not find the required exceptional circumstances. Even assuming Plaintiff is not well versed in the law and has made serious allegations that, if proven, would entitle him to relief, Plaintiff's case is not exceptional. The Court is faced with similar cases almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to his *pro se* status and his incarceration, the test is not whether Plaintiff would benefit from the appointment of

1 counsel. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). The test is whether  
2 exceptional circumstances exist; here, they do not. Indeed, circumstances common to most  
3 prisoners, such as lack of legal education and limited law library access, do not establish  
4 exceptional circumstances that would warrant a request for voluntary assistance of counsel. *See,*  
5 *e.g., Faultry v. Saechao*, 2020 WL 2561596, at \*2 (E.D. Cal., May 20, 2020) (stating that  
6 “[c]ircumstances common to most prisoners, such as lack of legal education and limited law  
7 library access, do not establish exceptional circumstances supporting appointment of counsel”);  
8 *see also Rand*, 113 F.3d at 1525 (finding no abuse of discretion under 28 U.S.C. § 1915(e) when  
9 district court denied appointment of counsel despite fact that pro se prisoner “may well have fared  
10 better-particularly in the realm of discovery and the securing of expert testimony”).

11 At this stage in the proceedings, Plaintiff has not yet presented a viable constitutional  
12 claim and the Court cannot determine whether Plaintiff is likely to succeed on the merits. While  
13 Plaintiff’s first amended complaint has been screened as required by 28 U.S.C. § 1915A(a), the  
14 Court determined Plaintiff had failed to state a claim upon which relief could be granted. (Doc.  
15 19.) The Court explained in its Second Screening Order the deficiencies present in Plaintiff’s  
16 three claims and advised Plaintiff he would be afforded one final opportunity to amend his  
17 complaint to cure the deficiencies identified. (*Id.* at 4-7.)

18 Finally, the Court finds Plaintiff can articulate his claims. In its First Screening Order  
19 issued November 15, 2021, the Court determined Plaintiff has failed to state a claim upon which  
20 relief could be granted. (Doc. 14.) Plaintiff responded to the Court’s Order by filing a First  
21 Amended Complaint on December 9, 2021, and tried to correct the deficiencies identified. While  
22 he has been unsuccessful in asserting a cognizable constitutional claim or claims, there is no basis  
23 to find Plaintiff is unable to do so at this stage of the proceedings, and Plaintiff will be afforded  
24 an opportunity to file a second amended complaint.

25 In sum, Plaintiff faces challenges and circumstances faced by most *pro se* prisoner  
26 litigants. Nevertheless, those circumstances are not exceptional and do not warrant the  
27 appointment of counsel. *Rand*, 113 F.3d at 1525.

